

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Email: norm@bamlawca.com

11 Website: www.bamlawca.com

12 Attorneys for Plaintiff

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

ROXANNE POND, an individual, on
behalf of herself and on behalf of all
persons similarly situated, and on behalf
of the State of California as a private
attorney general,

Plaintiff,

vs.

GLEN IVY HOT SPRINGS, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **CVRI2104986**
[Consolidated with CVRI2105059]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: May 9, 2023

Hearing Time: 8:30 a.m.

Reservation ID: 458035564309

Judge: Hon. Harold W. Hopp

Dept: 10

Action Filed: November 1, 2021

Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiff Roxanne Pond (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant
4 Glen Ivy Hot Springs, Inc. (“Defendant”), and seeks entry of an order: (1) preliminarily approving the
5 proposed settlement of this class action with Defendant; (2) for settlement purposes only, conditionally
6 certifying the following Class: “all individuals who are or previously were employed by Defendant in
7 California and classified as a non-exempt employee at any time during the Class Period”, which is
8 November 1, 2017 through January 1, 2023; (3) provisionally appointing Plaintiff as the representative
9 of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle Nordrehaug, and Aparajit
10 Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5)
11 approving the form and method for providing class-wide notice; (6) directing that notice of the
12 proposed settlement be given to the class; (7) appointing ILYM Group as Settlement Administrator,
13 and (8) scheduling a final approval hearing date to consider Plaintiff’s motion for final approval of the
14 settlement and entry of the Judgment, and Plaintiff’s motion for approval of attorneys’ fees and
15 litigation expenses. Plaintiff and Defendant (collectively the “Parties”) have reached a full and final
16 settlement of the above-captioned action, which is embodied in the Class Action and PAGA Settlement
17 Agreement (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement
18 is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed
19 herewith. The form of the Agreement is based upon the Los Angeles County Superior Court model
20 form for a class and PAGA settlement.

21 As consideration for this Settlement, the Gross Settlement Amount is One Million Five Hundred
22 Thousand Dollars (\$1,500,000) (the “Gross Settlement Amount”) to be paid by Defendant, as set forth
23 in the Agreement. The Gross Settlement Amount will settle all issues pending in the Action between
24 the Parties and will be made in full and final settlement of the Released Class Claims in exchange for
25 the payments to Participating Class Members from the Net Settlement Amount, and includes (a) the
26 costs of administration of the settlement, (b) all attorneys’ fees and costs, (c) Class Representative

27
28 ¹ Capitalized terms shall have the same meaning as defined in the Agreement.

1 Service Payment, and (d) the PAGA Penalties payment to the LWDA and the Aggrieved Employees.
2 (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include the employer's share of payroll
3 taxes which will be separately paid by Defendant. (Agreement at ¶ 3.1) The Settlement is all-in with
4 no reversion to Defendant and no need to submit a claim form. (Id.) Decl. Nordrehaug at ¶3.

5 The following is a table of the key financial terms of the Settlement and the proposed
6 deductions:

7 **\$1,500,000** (Gross Settlement Amount)
8 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
9 - \$17,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
10 - \$500,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
11 - \$30,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
12 - \$25,000 (Administration Expenses Payment - not to exceed amount)
13 **\$918,000** (Net Settlement Amount)

14 Based upon 1,270 Class Members who collectively worked 70,000 Workweeks, the Gross Settlement
15 Amount provides an average value of \$1,181 per Class Member and \$21 per Workweek and after
16 deductions the Net Settlement Amount provides an average recovery of \$722 per Class Member and
17 a recovery of \$13.11 per Workweek. Decl. Nordrehaug at ¶6.

18 On November 1, 2022, the Parties participated in an all-day mediation session presided over
19 by Hon. Carl West (Ret.), a respected jurist and experienced mediator of wage and hour class actions.
20 Following the mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's
21 proposal which was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug
22 at ¶5. The Settlement is fair, reasonable and adequate, and should be preliminarily approved because
23 there is a substantial monetary payment, and there are significant litigation and class-certification risks.
24 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
25 and enter the proposed order submitted herewith.

26 **II. DESCRIPTION OF THE SETTLEMENT**

27 The Gross Settlement Amount is One Million Five Hundred Thousand Dollars (\$1,500,000).
28 (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following
elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class
Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses
Payment; (4) the Class Representative Service Payment to Plaintiff; and (5) the PAGA Penalties

1 payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share
2 of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion
3 to Defendants. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

4 Within thirty (30) days of the Effective Date, Defendant shall deposit the Gross Settlement
5 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
6 to Participating Class Members along with the other Court-approved distributions shall be made by the
7 Administrator within fourteen (14) days after Defendant funds the Gross Settlement Amount.
8 (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

9 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
10 amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service
11 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the
12 Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class
13 Members as their Individual Class Payments. (Agreement at ¶¶ 1.23, 1.28 and 3.2.) From the Net
14 Settlement Amount, the Individual Class Payment for each Participating Class Member will be
15 calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by
16 all Participating Class Members during the Class Period and (b) multiplying the result by each
17 Participating Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will be based on
18 Defendant's records, however, Class Members will have the right to challenge the number of
19 Workweeks. Decl. Nordrehaug at ¶17.

20 Class Members may choose to opt-out of the Settlement by following the directions in the Class
21 Notice. (Agreement at ¶ 8.5, Ex. A.) The Class Notice Packet will include an Exclusion Form and an
22 Objection Form. (Agreement at ¶¶ 8.5(a), 8.7(b), Ex. A.) All Class Members who do not "opt out" will
23 be deemed Participating Class Members who will be bound by the Settlement and will be entitled to
24 receive an Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including
25 those who submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will
26 remain subject to the release of the Released PAGA Claims regardless of their request for exclusion.
27 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
28 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)

Decl. Nordrehaug at ¶18.

A Participating Class Member must cash his or her Individual Class Payment check within 180 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will be voided and any funds from such uncashed checks will be sent to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 5.4.) Class Members can then claim their funds through the Controller's website. Decl. Nordrehaug at ¶19.

Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement administration in an amount not to exceed \$25,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.

Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel Litigation Expenses Payment in an amount not to exceed \$17,000. (Agreement at ¶ 3.2(b).) Subject to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff as the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698, *et seq.* ("PAGA"). The PAGA Penalties are \$30,000. (Agreement at ¶¶ 1.34 and 3.2(d).) Pursuant to the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil penalties and and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the accompany proof of service, the LWDA has been served with this motion and the Agreement. Decl. Nordrehaug at ¶22.

III. CASE BACKGROUND

The description of the case and claims, along with the procedural history is set forth in the Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the

1 exchange of documents and information in connection with the Action over two years which permitted
2 Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The
3 Parties participated in mediation on November 1, 2022 with Hon. Carl West (Ret.), which after arms'
4 length negotiations during the mediation, resulted in this Settlement. Decl. Nordrehaug, ¶12.

5 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO**
6 **GRANT PRELIMINARY APPROVAL**

7 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
8 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
9 California "[p]ublic policy generally favors the compromise of complex class action litigation."
10 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
11 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
12 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
13 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
14 denied, 459 U.S. 1217 (1983)).

15 California Rule of Court 3.769 requires court approval of the settlement of class action lawsuits.
16 Preliminary approval is the first of three steps that comprise the approval procedure for settlements of
17 class actions. The second step is the dissemination of notice of the settlement to all class members.
18 The third step is a final settlement approval hearing, at which evidence and argument concerning the
19 fairness, adequacy, and reasonableness of the settlement may be presented, and class members may be
20 heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996);
21 *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

22 The primary question presented on an application for preliminary approval of a proposed class
23 action settlement is whether the proposed settlement is "within the range of possible approval."
24 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
25 Cir. 1982).² Preliminary approval is merely the prerequisite to giving notice so that "the proposed

26 ² California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are
28 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
conducting class actions." *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), *citing*

1 settlement... may be submitted to members of the prospective Class for their acceptance or rejection.”
2 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
3 "a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining."
4 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v.*
5 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
6 determination that settlement was "fair, reasonable and adequate" where the settlement "provided
7 valuable benefits to the class . . . that were 'particularly valuable in light of the risks plaintiff would have
8 faced if she proceeded to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
9 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
10 settlement is given to the class members and a final settlement hearing is held by the Court.

11 **A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement**

12 The approval of a proposed settlement of a class action suit is a matter within the broad
13 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794.
14 Preliminary approval does not require the trial court to answer the ultimate question of whether a
15 proposed settlement is fair, reasonable and adequate. That final determination is made only after notice
16 of the settlement has been given to the class members and after they have been given an opportunity
17 to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore's*
18 *Federal Practice* §§23.80 - 23.85 (2003).

19 In considering a potential settlement for preliminary approval purposes, the trial court does not
20 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
21 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
22 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is
23 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688
24 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
25 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “the
26 terms of the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61,
27

28 *Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the settlement, the amount is “not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel’s familiarity with this litigation and previous experience with cases such as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*, 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should be given a presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

B. Factors To Be Considered In Granting Preliminary Approval

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. In determining whether to grant preliminary approval, the court considers whether the "(1) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). No one factor should be determinative, but rather all factors should be considered. The analysis has been summarized as follows:

If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

Manual of Complex Litigation, Second § 30.44, at 229.

Here, the Settlement meets all of these criteria for preliminary approval.

1. The Settlement is the Product of Serious, Informed and Arm’s Length Negotiations by Experienced Counsel

This settlement is the result of extensive and hard-fought litigation as well as negotiations

1 before an experienced and well-respected mediator. The negotiations have been, at all times,
2 adversarial and non-collusive in nature. *See, 4 Newberg on Class Actions*, § 13:45 (5th ed.) (due to the
3 preference of settlement over litigation, “a court will presume that a proposed class action settlement
4 is fair when certain factors are present, particularly evidence that the settlement is the product of
5 arms-length negotiation, untainted by collusion.”). Defendant has expressly denied and continues to
6 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
7 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
8 Class Claims of the Class in accordance with this Settlement.³

9 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
10 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
11 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar
12 claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed
13 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.
14 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court “undoubtedly should
15 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
16 mediator, and the paucity of objectors to the settlement.”); *Dunk*, 48 Cal. App. 4th at 1802.

17 The Parties attended an arms-length mediation session with Hon. Carl West (Ret.), a respected
18 jurist and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
19 preparation for the mediation, Defendant provided Class Counsel with payroll and employment data
20 and other information regarding the Class Members, various internal documents, and other
21 compensation and employment-related materials. Class Counsel analyzed the data with the assistance
22 of damages expert Berger Consulting and prepared and submitted a mediation brief to the mediator. The
23

24 ³ The release applicable to the Class is appropriately tethered to allegations in the Action and the
25 “Released Class Claims” are narrowly defined as “all claims that were alleged, or reasonably could
26 have been alleged, based on facts stated in the Operative Complaint which occurred during the Class
27 Period. Except as expressly set forth in this Agreement, Participating Class Members do not release any
28 other claims, including claims for vested benefits, wrongful termination, violation of the Fair
Employment and Housing Act, unemployment insurance, disability, social security, workers'
compensation, or California class claims based on facts occurring outside the Class Period.”
(Agreement at ¶¶ 1.38 and 6.2.)

1 final settlement terms were negotiated and set forth in the Agreement now presented for this Court's
2 approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiff and Class Counsel believe that this
3 Settlement is fair, reasonable and adequate. Class Counsel will be submitting the Settlement
4 Agreement to the LWDA concurrently with the filing of this motion pursuant to Labor Code §
5 2699(1)(2). Decl. Nordrehaug at ¶38.

6 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
7 One Million Five Hundred Thousand Dollars (\$1,500,000). The Settlement is all-in with no reversion
8 to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

9 Class Counsel conducted an investigation into the facts of the class action. Class Counsel
10 engaged in a thorough review and analysis of the relevant documents and data with the assistance of
11 an expert. Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient
12 information to make an informed judgment regarding the likelihood of success on the merits and the
13 results that could be obtained through further litigation. In addition, Class Counsel previously
14 negotiated settlements with other employers in actions involving nearly identical issues and analogous
15 defenses. Based on the foregoing data and their own independent investigation, evaluation and
16 experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the
17 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
18 facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and
19 potential appellate issues. Decl. Nordrehaug at ¶ 14.

20 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying
21 this Action against Defendant through possible appeals which could take several years. Class Counsel
22 has also taken into account the uncertain outcome and risk of litigation, especially in complex class
23 actions such as this Action. Class Counsel is also mindful of and recognize the inherent problems of
24 proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation,
25 Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement is in the best
26 interest of the Class Members. Decl. Nordrehaug, ¶ 23.

27 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
28 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who

1 zealously advocated their positions. Accordingly, “[t]here is likewise every reason to conclude that
2 settlement negotiations were vigorously conducted at arms’ length and without any suggestion of undue
3 influence.” *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

4 **2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within**
5 **the Range for Approval**

6 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
7 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
8 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 1,270 Class
9 Members who collectively worked 70,000 Workweeks, the Gross Settlement Amount provides an
10 average value of \$1,181 per Class Member and \$21 per Workweek and after deductions the Net
11 Settlement Amount provides an average recovery of \$722 per Class Member and a recovery of \$13.11
12 per Workweek. This means that a Class Member who worked the entire Class Period (270 weeks) will
13 have a net recovery of \$3,539, and a Class Member who worked only a single week in the Class Period
14 will have a net recovery of \$13.11. Decl. Nordrehaug, ¶6.

15 The calculations to compensate for the amount due for the Class at the time of the mediation
16 were calculated by Berger Consulting, Plaintiff’s damage expert. As to the Class whose claims are at
17 issue in this Action, Plaintiff used this expert to analyze the data and determine the potential unpaid
18 wages for the employees. The maximum potential damages were calculated to be \$293,976 for the
19 potential unpaid wages due to alleged reporting time, \$341,586 for alleged unpaid wages due to
20 donning / doffing and health screening, \$3,932,259 for alleged rest period damages based upon a 100%
21 assumed potential violation rate from on premise restriction, \$358,400 for alleged unreimbursed
22 business expenses for assumed personal cell phone usage at \$20 per month. The meal break claim had
23 nominal value because Defendant established that it paid the meal period premium for every violation
24 apparent in the time records. Decl. Nordrehaug, ¶6. As a result, the total damage valuation was
25 calculated that Defendant was subject to a maximum damage claim in the amount of \$4,926,221. As
26 to potential penalties, Plaintiff calculated that potential waiting time penalties were a maximum of
27 \$2,070,708 and potential wage statement penalties were between \$598,600 and \$1,173,750, depending
28 on the predicate violation. Defendant vigorously disputed Plaintiff’s calculations and exposure

1 theories. Decl. Nordrehaug, ¶6.

2 A number of defenses asserted by Defendant, however, present serious threats to the claims of
3 the Plaintiff and the other Class Members. Defendant asserted that Defendant's practices complied
4 with all applicable Labor laws. Defendant argued that Class Members were paid for all time worked
5 and that all work time was properly recorded. Defendants contend that their meal and rest period
6 policies fully complied with California law and Defendant did not fail to provide the opportunity for
7 legally required meal and rest breaks. Plaintiffs' theory of liability for rest breaks was based upon an
8 on premise restriction, which Defendant disputed and argued that this theory has been rejected by
9 Courts as sufficient alone to establish liability for on-duty rest breaks. *See, e.g., Ritenour v. Carrington*
10 *Mortg. Servs., LLC*, 2018 WL 5858658, at *7 (C.D. Cal. 2018) (holding that defendant's on-premises
11 rest period policy was facially valid and legal); *Hubbs v. Big Lots Stores, Inc.*, 2018 WL 5264141, at
12 *5 (C.D. Cal. 2018) (citing Augustus and dismissing on-premises rest period claims for failure to state
13 a claim); *Bell v. Home Depot U.S.A., Inc.*, 2017 WL 1353779, at *2 (E.D. Cal. 2017) (declaring
14 defendant's argument that *Augustus* implied on-premises rest periods were legal as "more persuasive
15 and accurate" than plaintiff's argument to the contrary). Defendant contended that there was no failure
16 to pay for business expenses and any cell phone usage was merely convenient and voluntary such that
17 reimbursement was not legally required. Finally, Defendant could argue that the Supreme Court
18 decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on
19 liability, value, and class certifiability as to the meal and rest period claims. Defendant also argues that
20 based on its facially lawful practices, Defendant acted in good faith and without willfulness, which if
21 accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If
22 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
23 While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses
24 have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

25 In additional, there was also a significant risk that, if the Action was not settled, Plaintiff would
26 be unable to obtain a certified class and maintain the certified class through trial, and thereby not
27 recover on behalf of any employees other than herself. At the time of the mediation, Defendant
28 forcefully opposed the propriety of class certification, arguing that individual issues precluded class

1 certification. Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank*
2 *National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery
3 even where the class has been certified. While other cases have approved class certification in wage
4 and hour claims, class certification in this action was hotly disputed and the maintenance of a certified
5 class through trial was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

6 Given these uncertainties, the Gross Settlement Amount of \$1,500,000 is fair and reasonable.
7 This amount represents more than 30% of the maximum value of the alleged damages at issue in this
8 case at the time this Settlement was negotiated.⁴ In addition, the above maximum calculations should
9 then be adjusted in consideration for both the risk of class certification and the risk of establishing
10 class-wide liability on all claims. Given the amount of the settlement as compared to the potential value
11 of claims in this case and the defenses asserted by Defendant, this settlement is fair and reasonable.⁵
12 Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

13 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
14 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). After arm's length negotiations between
15 experienced and informed counsel, the Parties recognized the potential risks and agreed on the
16 Settlement with a Gross Settlement Amount of \$1,500,000. As the Court held in *Glass*, where the
17 parties faced uncertainties similar to those here:

18 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,

19
20 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
21 Plaintiff has not included the PAGA claim in this discussion of the value of the class claims. The
22 PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

23 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
24 settlement where the settlement amount constituted approximately 25% of the estimated overtime
25 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
26 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
27 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy*
28 *v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval
of a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral*
v. Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

1 and likely duration of further litigation likewise favors the settlement. Regardless of
2 how this Court might have ruled on the merits of the legal issues, the losing party likely
3 would have appealed, and the parties would have faced the expense and uncertainty of
litigating an appeal. 'The expense and possible duration of the litigation should be
considered in evaluating the reasonableness of [a] settlement.'"

4 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
5 (9th Cir. 2000)).

6 **3. The Settlement Does Not Improperly Grant Preferential Treatment To**
7 **Class Representatives or Segments Of The Class**

8 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
9 not grant preferential treatment to Plaintiff or segments of the Class in any way. Payments to the Class
10 Members are all determined under a neutral methodology. Each Participating Class Member will
11 receive the same opportunity to participate in and receive payment through a neutral formula that is
12 based upon the Workweeks for that individual. Decl. Nordrehaug, ¶4.

13 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for
14 his service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiff
15 performed her duties admirably by working with Class Counsel for over eighteen months. The
16 Declaration of the Plaintiff is submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage,
17 the requested service award of \$10,000 is well within the accepted range of awards for purposes of
18 preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D.
19 Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian*
20 *Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service
21 award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008
22 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs
23 in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007)
24 (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements).
25 As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the
26 employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing
27 an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of
28 all employees. 2007 WL 221862 at *16-17.

1 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
2 **Preliminary Approval Of The Settlement**

3 The stage of the proceedings at which this Settlement was reached also militates in favor of
4 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
5 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
6 Members' claims before the Action was filed. Class Counsel conducted a review and analysis of the
7 relevant documents and data. Class Counsel was also experienced with the claims at issue here, as
8 Class Counsel previously litigated and settled similar claims in other actions. Accordingly, the
9 agreement to settle did not occur until Class Counsel possessed sufficient information to make an
10 informed judgment regarding the likelihood of success on the merits and the results that could be
11 obtained through further litigation. Decl. Nordrehaug at ¶28.

12 Based on the foregoing data and their own independent investigation and evaluation, Class
13 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
14 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
15 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
16 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both
17 parties possessed sufficient information to make an informed judgment regarding the likelihood of
18 success on the merits and the results that could be obtained through further litigation. Decl.
19 Nordrehaug at ¶29.

20 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY**

21 Certification is appropriate when the moving party has demonstrated the existence of an
22 ascertainable class and a well-defined community of interest among the class. *See, e.g., Brinker*
23 *Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012). Plaintiff contends that the proposed
24 settlement meet all of the requirements for class certification under California Code of Civil Procedure
25 § 382 as demonstrated below, and therefore, the Court may appropriately approve the Class as defined
26 in the Agreement. This Court should conditionally certify the Class for settlement purposes only,
27 defined as follows:

28 All individuals who are or previously were employed by Defendant in California and
classified as a non-exempt employee at any time during the Class Period.

1 (Agreement at ¶ 1.5.)

2 The Class Period is November 1, 2017 through January 1, 2023. (Agreement at ¶ 1.13.)

3 **A. California Code of Civil Procedure § 382**

4 Plaintiff seeks certification of this Class for settlement purposes under California Code of Civil
5 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
6 class certification is appropriate as follows:

7 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
8 of a common or general interest, of many persons, or when the parties are numerous,
9 and it is impracticable to bring them all before the court...” The party seeking
10 certification has the burden to establish the existence of both an ascertainable class and
11 a well-defined community of interest among class members. (*citations omitted*). The
“community of interest” requirement embodies three factors: (1) predominant common
questions of law or fact; (2) class representatives with claims or defenses typical of the
class; and (3) class representatives who can adequately represent the class.

12 *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004).

13 Defendant does not dispute, for settlement purposes only, that all of the elements for class
14 certification are met here. Defendant does not concede that certification is appropriate outside of this
15 Settlement and preserves all rights to oppose certification if, for any reason, the settlement does not
16 become effective. While Defendant reserves all rights to dispute that the Plaintiff can satisfy these
17 requirements, the Parties agree that Defendant will not dispute that these requirements may be satisfied
18 in this case for purposes of settlement only and therefore, the proposed Class should be certified for
19 purposes of settlement only. (Agreement at ¶ 2.8.)

20 **B. The Proposed Class Is Ascertainable and Numerous**

21 Plaintiff brings this action on behalf of a Class of exempt employees of Defendant during the
22 Class Period. Plaintiff asserts that all of these individuals are ascertainable because the class members
23 can readily be determined through examination of Defendant’s files. Given that the Class consists of
24 1,270 members, Plaintiff maintains that numerosity is clearly satisfied. *See Bowles v. Superior Court*,
25 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
26 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiff
27 asserts that the 1,270 current and former employees that comprise the Class can be identified based on
28 Defendant’s records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

1 **C. Common Issues of Law and Fact Predominate**

2 Predominance of common issues of law or fact does not require that the common issues be
3 dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg*
4 *on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). “Predominance is a comparative concept, and ‘the
5 necessity for class members to individually establish eligibility and damages does not mean individual
6 fact questions predominate.’” *Sav-On*, 34 Cal. 4th at 334.

7 Commonality exists if there is a predominant common legal question regarding how an
8 employer’s policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
9 1536 (2008) (“[T]he common legal question remains the overall impact of Diva's policies on its
10 drivers.”) Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
11 certification stage since the question is “essentially a procedural one that does not ask whether an action
12 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

13 Here, Plaintiff contends that common questions of law and fact are present, specifically the
14 common questions of whether Defendant’s employment practices were lawful, whether Class members
15 were lawfully compensated for all hours worked, whether Class members were entitled to reporting
16 time pay, whether Defendant failed to provide meal and rest periods to Class Members, whether
17 Defendant failed to provide required expense reimbursement, and whether Class Members are entitled
18 to damages and penalties as a result of these practices. Plaintiff contends that certification of this Class
19 is appropriate because Defendant allegedly engaged in uniform practices with respect to the Class
20 Members. As a result, these common questions of liability could be answered on a class wide basis.
21 Decl. Nordrehaug, ¶30. Defendant disputes that common questions predominate but will not oppose
22 such a finding for purposes of this Settlement only.

23 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

24 The typicality requirement requires the Plaintiff to demonstrate that the members of the class
25 have the same or similar claims as the Plaintiff. “The typicality requirement is met when the claims
26 of the [p]laintiff arise from the same event or are based on the same legal theories.” *Tate v.*
27 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon, supra*, 150 F.3d at 1020, the Ninth
28

1 Circuit held that “[u]nder the rule's permissive standards, representative claims are ‘typical’ if they are
2 reasonably coextensive with those of absent class members; they need not be substantially identical.”

3 In this Action, Plaintiff contends that the typicality requirement is fully satisfied. Plaintiff, like
4 every other member of the Class, was employed by Defendant as a non-exempt employee during the
5 Class Period, and, like every other member of the Class, was subject to the same employment practices.
6 Plaintiff, like every other member of the Class, also claims owed compensation as a result of the
7 Defendant’s uniform company policies and practices. Thus, the claims of Plaintiff and the members
8 of the Class arise from the same course of conduct by Defendant, involve the same issues, and are based
9 on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff asserts that
10 the typicality requirement is met as to the common issues presented in this case. Defendant does not
11 oppose a finding of typicality for purposes of this Settlement only.

12 **E. The Class Representation Fairly and Adequately Protected the Class**

13 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
14 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
15 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
16 met here. First, Plaintiff is well aware of her duties as the representative of the Class and has actively
17 participated in the prosecution of this case to date. Plaintiff effectively communicated with Class
18 Counsel, provided documents and information to Class Counsel, and participated in the investigation
19 and resolution of the Action. The personal involvement of the Plaintiff was essential to the prosecution
20 of the Action and the monetary settlement reached. Second, Plaintiff retained competent counsel who
21 are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug at ¶ 31.
22 Third, there is no antagonism between the interests of the Plaintiff and those of the Class. Both the
23 Plaintiff and the Class Members seek monetary relief under the same set of facts and legal theories.
24 Under such circumstances, there can be no conflicts of interest, and adequacy of representation is
25 satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020). Defendants
26 dispute that the adequacy requirement is satisfied but will not oppose such a finding for purposes of this
27 Settlement only.

1
2 **F. The Superiority Requirement Is Met**

3 To certify a class, the Court must also determine that a class action is superior to other available
4 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
5 common issues will reduce litigation costs and promote greater efficiency, a class action may be
6 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
7 1996). As courts have previously observed:

8 Absent class treatment, each individual plaintiff would present in separate, duplicative
9 proceedings the same or essentially the same arguments and evidence, including expert
10 testimony. The result would be a multiplicity of trials conducted at enormous expense
11 to both the judicial system and the litigants. “It would be neither efficient nor fair to
12 anyone, including defendants, to force multiple trials to hear the same evidence and
13 decide the same issues.”

14 *Sav-On*, 34 Cal. 4th at 340, citing *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 67 (S.D. Ohio 1991).

15 Here, Plaintiff contends that a class action is the superior mechanism for resolution of the claims
16 as pled by the Plaintiff. While Defendant disputes that class treatment is superior, Defendant does not
17 dispute a finding of superiority in this action for purposes of this Settlement only.

18 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

19 The Court has broad discretion in approving a practical notice program. The Parties have
20 agreed upon procedures by which the Class Members will be provided with written notice of the
21 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
22 with the Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet
23 containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
24 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
25 current mailing address information available. (Agreement at ¶ 8.4(b).)

26 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
27 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
28 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
impact on the rights of the Class Members if they do not opt out, including a description of the
applicable release; (iii) information to the Class Members regarding how to opt out and how to object

1 to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
2 amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiff's service award
3 request; and (vi) the anticipated expenses of the Administrator. An Objection form and a Request for
4 Exclusion form will accompany the Class Notice, the forms of which are part of Exhibit A to the
5 Agreement. Decl. Nordrehaug at ¶32.

6 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
7 the Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out) or to submit a
8 written objection. (Agreement at ¶¶ 1.42, 8.5, 8.7.) In the event of a re-mailing, the Response Deadline
9 will be extended by an additional 14 days. (Id.) Class Members shall be given the opportunity to object
10 to the Settlement and/or requests for attorneys' fees and expenses and to appear at the Final Approval
11 Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-
12 out will automatically receive a payment of their Individual Class Payment. This notice program was
13 designed to meaningfully reach the Class Members and it advises them of all pertinent information
14 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice
15 satisfies the requirements of due process and is the best notice practicable under the circumstances and
16 complies with Rules of Court 3.766 and 3.769(f).

17 VII. CONCLUSION

18 Plaintiff respectfully request that the Court preliminarily approve the proposed settlement and
19 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
20 approval hearing for the proposed date of September 19, 2023, which is a date that is at least one
21 hundred twenty (120) days from the date of Preliminary Approval.

22 Dated: April 12, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

23 By: /s/ Kyle Nordrehaug
24 Kyle R. Nordrehaug, Esq.
25 Attorney for Plaintiff
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